

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
)	
Plaintiff,)	
)	
v.)	Criminal Action No.
)	10-00102-01-CR-W-DW
LARRY RICK MIKAWA,)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

On April 9, 2010, this Court, on its own motion, moved that defendant Mikawa should be sent for a mental evaluation, pursuant to 18 U.S.C. § 4241, to determine his mental competency to stand trial. On April 20, 2010, the Court entered its Order pursuant to 18 U.S.C. § 4241(b) directing that a psychological or psychiatric examination of the defendant be conducted and that a psychological or psychiatric report be filed with the Court pursuant to 18 U.S.C. §§ 4247(b) and (c).

The Court has now received the psychological or psychiatric report of Dr. Jeremiah Dwyer which concluded that the defendant is incompetent to understand the nature and consequence of the proceedings against him and to assist properly in his defense. This report has been provided to and reviewed by counsel for the government and counsel for the defendant. On September 7, 2010, a hearing was held pursuant to 18 U.S.C. § 4247(d) for the purpose of determining the mental competency of the defendant to stand trial. Defendant was not present. At this hearing, counsel for the government and counsel for the defendant stipulated that the Court could consider the psychological or psychiatric report of Dr. Jeremiah Dwyer as if

Dr. Dwyer had appeared in person and testified under oath. No additional evidence was offered by the government or by the defendant.

Based on the record before the Court and the findings of Dr. Jeremiah Dwyer, it is RECOMMENDED that the District Court, after conducting its own independent review of the record, find that defendant is incompetent to understand the nature and consequence of the proceedings against him and to assist properly in his defense. It is further RECOMMENDED that, pursuant to 18 U.S.C. 4241(d), the Court enter an order committing defendant Mikawa to the custody of the Attorney General for hospitalization and treatment in a suitable facility for a reasonable time up to 120 days to determine whether there is a substantial probability that in the foreseeable future, the defendant will attain the capacity to permit the trial to proceed.

Counsel are reminded that each has 14 days from the date of receipt of a copy of this Report and Recommendation to file and serve specific objections to the same. A failure to file and serve timely objections shall bar attack on appeal of the factual findings in this Report which are accepted or adopted by the District Judge except upon the ground of plain error or manifest injustice.

/s/ JOHN T. MAUGHMER

JOHN T. MAUGHMER
United States Magistrate Judge

Kansas City, Missouri